

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BARRY GIBBS,

Plaintiff,

**STIPULATION AND ORDER  
OF SETTLEMENT AND  
DISMISSAL**

-against-

CITY OF NEW YORK, LOUIS EPPOLITO, SR., and  
JOHN MULDOON,

CV-06-5112 (ILG)

Defendants.

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**WHEREAS**, plaintiff Barry Gibbs commenced this action by filing a complaint on or about September 22, 2006, alleging that defendants and others violated his constitutional and common law rights which resulted, *inter alia*, in plaintiff Barry Gibbs suffering personal physical injuries and sickness; and

**WHEREAS**, defendants have denied any and all liability arising out of plaintiff's allegations; and

**WHEREAS**, the parties now desire to resolve the remaining issues raised in this litigation, without further proceedings and without admitting any fault or liability;

**NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the undersigned, as follows:

1. The above-referenced action is hereby dismissed with prejudice, and without costs, expenses, or fees except as provided for in paragraph "2" below.
2. The City of New York hereby agrees to pay plaintiff Barry Gibbs future periodic payments and up-front cash at a cost to the City of New York in the sum of NINE MILLION

NINE HUNDRED THOUSAND and NO/00 (\$9,900,000.00) DOLLARS in full satisfaction of all claims against the City of New York and John Muldoon, inclusive of claims for costs, expenses and attorney fees. In consideration for the payment of future periodic payments and up-front cash at a total cost to the City of New York in this sum, Plaintiff agrees to the dismissal of all claims against the City of New York and John Muldoon, and to release all defendants, except Louis Eppolito, Sr., and any present or former employees or agents of the City of New York, or any agency thereof, except Louis Eppolito, Sr., from any and all liability, claims, or rights of action arising from and contained in the complaint in this action, including claims for costs, expenses and attorney fees.

3. Plaintiff shall execute and deliver to defendants' attorney all documents necessary to effect this settlement, including, without limitation, a General Release and Affidavit of Status of Liens, in the form annexed hereto, based on the terms of paragraph 2 above.

4. Nothing contained herein shall be deemed to be an admission by any of the defendants that they have in any manner or way violated Plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules, regulations or bylaws of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations.

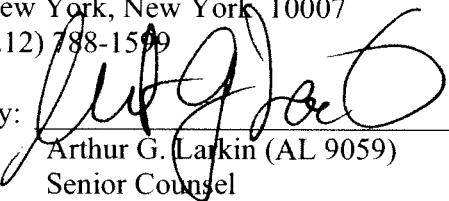
5. Nothing contained herein shall be deemed to constitute a policy or practice of the City of New York or any agency thereof.

6. This Stipulation and Order contains all the terms and conditions agreed upon by the parties hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of the instant proceeding shall be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein with the exception of the Settlement Agreement and Release, which shall set forth the details of the future periodic payments.

Dated: New York, New York  
July 21, 2010

NEUFELD, SCHECK &  
BRUSTIN, LLP  
*Attorneys for Plaintiff*  
99 Hudson Street, 8<sup>th</sup> Floor  
New York, New York 10013

By:   
Nick J. Brustein, Esq. (NB 0605)

MICHAEL A. CARDOZO  
Corporation Counsel of the City of New York  
*Attorney for Defendants City of New York and John Muldoon*  
100 Church Street  
Room 3-180  
New York, New York 10007  
(212) 788-1599  
By:   
Arthur G. Larkin (AL 9059)  
Senior Counsel

**SO ORDERED:**

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Hon. I Leo Glasser, U.S.D.J.

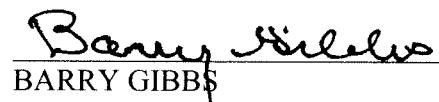
**GENERAL RELEASE**

Know that I, Barry Gibbs, plaintiff in the action entitled Barry Gibbs v. City of New York et al., CV-06-5112 (ILG), in consideration of future periodic payments and up-front cash at a cost to the City of New York in the sum of NINE MILLION NINE HUNDRED THOUSAND AND NO/00 (\$9,900,000.00) DOLLARS, do hereby release and discharge defendants, except for Louis Eppolito, Sr.; their successors or assigns; and all past and present officials, employees, representatives and agents of the City of New York, or any agency thereof, except for Louis Eppolito, Sr., from any and all claims which were or could have been alleged by me in the aforementioned action arising out of the events alleged in the complaint in said action, including all claims for costs, expenses and attorney's fees.

This Release may not be changed orally.

**THE UNDERSIGNED HAS READ THE FOREGOING RELEASE AND FULLY UNDERSTANDS IT.**

IN WITNESS WHEREOF, I have executed this 28 day of July, 2010.

  
BARRY GIBBS

STATE OF NEW YORK

SS.:

COUNTY OF NEW YORK

On July 28, 2010, before me personally came Barry Gibbs, to me known, and known to me to be the individual described in, and who executed the foregoing RELEASE, and duly acknowledged to me that he executed the same.

  
NOTARY PUBLIC

EMMA FREUDENBERGER  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 02FR6196775  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES NOV. 17, 2012

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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BARRY GIBBS,

Plaintiff,

PLAINTIFF'S AFFIDAVIT OF  
STATUS OF LIENS

-against-

CV-06-5112 (ILG)

CITY OF NEW YORK, LOUIS EPPOLITO, SR., and  
JOHN MULDOON,

Defendants..

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STATE OF NEW YORK        )  
                                :  
COUNTY OF NEW YORK      ) SS.:  
                                )

**BARRY GIBBS**, being duly sworn, says:

I am the plaintiff in the above-entitled action. My date of birth is [REDACTED] and my social security number is [REDACTED]. My Medicare number is [REDACTED] (plaintiff: write "No number" if not applicable). I reside at [REDACTED]. I am making this affidavit with full knowledge that the same will be relied upon by the City of New York, its agents, employees, and representatives in connection with settlement of this claim/action against them.

*Please check all that apply below and detail where applicable:*

I am not indebted to any department or agency of the City of New York and there are no liens outstanding.

I have unpaid liens, violations or other debts owed to a department and/or agency of the City of New York. I expressly consent to the payment of those sums, or to the sums agreed upon by counsel, directly from the settlement proceeds.

*List all liens, violations and/or other debts by providing the name of each City agency (e.g. Department of Finance; Department of Sanitation; Environmental Control Board) and the outstanding sums due.*

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I have not received Medicaid or Public Assistance benefits.

I have received Medicaid and/or Public Assistance benefits. The Human Resources Administration, Department of Social Services of the City of New York ("HRA") has issued a Final Notice of Lien which provides a total amount due of \$ 0 (attach copy). I understand that HRA will be paid that amount, or the amount agreed upon by counsel, directly from the settlement proceeds, and that the payment of an amount lesser than the final notice amount is a non-assertion of HRA's lien against the proceeds of this settlement and shall not be deemed a waiver of the full amount owed.

As of the date of this affidavit, I have not received Medicare coverage/benefits. [Note: This query is made pursuant to Section 111 of the Medicare, Medicaid, and SCHIP Extension Act of 2007, 42 U.S.C. 1395(B)(8)].

I am a Medicare beneficiary. I am aware of my obligation to reimburse Medicare for payments and/or benefits that I receive directly or indirectly and that reimbursement may be made from proceeds I receive from any judgment or settlement of a personal injury action. Medicare has confirmed that it will accept the total amount of \$ \_\_\_\_\_ .00 as full and final reimbursement of all Medicare payments made to date. [Attach copy of Medicare reimbursement letter]. In accordance with the attached Medicare letter, I consent to the payment of that sum directly from the settlement proceeds.

I am not in arrears in child support payments.

I am in arrears in child support payments and expressly agree to the collection by the NYC Office of Child Support of all unpaid sums directly from the settlement proceeds.

I am not indebted nor am I subject to liens by any City public hospital.

I am indebted to \_\_\_\_\_ [City hospital] in the total lien amount of \$ \_\_\_\_\_. I expressly consent to the payment of that sum directly from the settlement proceeds.

I have not received Workers' Compensation or Disability Benefits and there are no liens for the same in this matter. \*excluding military benefits

I am indebted to \_\_\_\_\_ [for Workers' Compensation or Disability Benefits] in the total lien amount of \$ \_\_\_\_\_. I expressly consent to the payment of that sum directly from the settlement proceeds.

Sworn to before me this  
28 day of July, 2010

  
NOTARY PUBLIC

  
BARRY GIBBS

EMMA FREUDENBERGER  
NOTARY PUBLIC - STATE OF NEW YORK  
NO. 02FR6196775  
QUALIFIED IN NEW YORK COUNTY  
COMMISSION EXPIRES NOV. 17, 2012

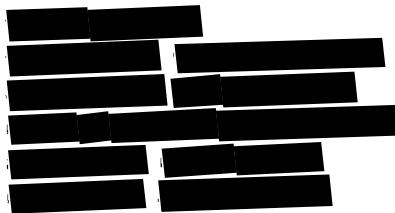
HUMAN RESOURCES ADMINISTRATION  
INVESTIGATION, REVENUE AND  
ENFORCEMENT ADMINISTRATION  
DIVISION OF LIENS AND RECOVERY  
PO Box 3786  
Church Street Station  
New York, NY 10008-3786  
Phone: (212) 274-5892 Fax: (212) 274-4988



Date: July 20, 2010

EMMA FREUDENBERGER  
NUEFELD SCHECK BRUSTIN  
99 HUDSON STREET 8TH FLOOR  
NEW YORK , NY 10013

Case Name: BARRY A GIBBS



Dear EMMA FREUDENBERGER:

In accordance with Social Services Law Section 104-b, the New York City Department of Social Services will not assert a lien against the proceeds of your client's personal-injury lawsuit/claim identified above.

Thank you for your cooperation in this matter.

Yours truly,

A handwritten signature in black ink, appearing to read "GREGORY MCSTAX". Below the signature, the text "Division of Liens and Recovery" and "By: GREGORY MCSTAX" is printed. To the left of the signature, the phone number "(212) 274- 5892" is written.